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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,257	04/25/2001	David Robert Dudek	TS9246 (US)	9795

7590

10/29/2003

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EXAMINER

NASH, BRIAN D

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 10/29/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

NK

Office Action Summary

Application No.

09/843,257

Applicant(s)

DUDEK ET AL.

Examiner

Brian D Nash

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received 1 October 2003. Applicant has amended the specification, amended claims 1, 6-8, cancelled claims 12-17, and added new claims 25-29. The pending claims in the application are now 1-11 and 24-29.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 and 24-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1(ii), 24(ii), and 27(ii), recite the limitation "said one or more consumer products". There is insufficient antecedent basis for this limitation in the claim.

It is not clear what the intended invention is with the present claim language. The claims have been amended such that the consumer product has been distinguished as a "household cleaning and detergent" consumer product. If applicant intends this distinction, then "household cleaning and detergent" should be maintained throughout the claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4-11, and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,996,316 to Kirschner in view of Official Notice and further in view of US 5,685,435 to Picioccio et al. Kirschner discloses the invention substantially as claimed including a system and method for order packing including (i) providing a product at a manufacturing site, (ii) filling a bulk container with a beverage, (iii) placing bulk container onto a pallet, and (iv) transporting pallet to customer site and transporting pallet to a distributor prior to customer site (see Fig. 9). Kirschner does not specifically show removing the bulk container from a pallet, the transfer of product from a bulk container into an individual storage container for retail to the consumer, the beverage as a concentrated form so that the product may be reconstituted later, or the use of a vending machine.

Official Notice is taken that both the concept and system for removing bulk containers from palletized loads, transfer of a product from a bulk container to an individual storage container for consumer use, transfer of product in a concentrated form for the purpose of reduced weight and volume, and incorporation of a vending machine at the consumer site are all well known and expected in the art. Furthermore, in the specific case of Kirschner, it is well known to package and ship soft drinks in concentrated "syrup" form to be reconstituted with carbonated water at the consumer site via an automated vending machine or at a restaurant soda fountain.

It is an obvious extension of the system and method disclosed by Kirschner as well as a highly used system and method for products such as soft drinks, coffee, and other consumer products.

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Regarding the limitation that the consumer product is a “household cleaning and detergent” product, Kirschner does not disclose a household cleaning and detergent product. However, Picioccio et al teach the concept and system for automated bulk vending of products at a retail location for the purpose of giving consumers the option of selecting optional blends from a plurality of products (see Picioccio et al, column 1, line 28 – column 2, line 44). It would have been obvious to one having ordinary skill in the art at the time of the invention to transport household cleaning and detergent consumer products in concentrated bulk form to be later reconstituted at a retail location, as taught by Kirschner and Picioccio et al since such application of this process would reduce weight and volume of transport as well as offer customizable blends to the consumer.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,996,316 to Kirschner in view of Official Notice as applied to claims 1-2 and 4-17 above, and further in view of the admitted prior art. As discussed above in paragraph 7 of this office action, Kirschner discloses the invention substantially as claimed; however, a dry break coupling system is not disclosed. Applicant’s specification (page 3, lines 15-18) discloses that dry break coupling systems are well known in the art.

In view of the admitted prior art, it would have been obvious to one having ordinary skill in the art to have used a dry break coupling system in the product delivery system of Kirschner for the purpose of ensuring product integrity and minimizing the potential for product counterfeiting.

Response to Arguments

7. Applicant's arguments filed 1 October 2003 have been fully considered but they are not persuasive. Applicant has attempted to challenge the examiner's taking of Official Notice on page 9, lines 1-20; however, applicant has not provided adequate information or argument so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Therefore, the presentation of a reference to substantiate the Official Notice is not deemed necessary. The examiner's taking Official Notice has been maintained.

The examiner's taking of Official Notice pertains to both the concept and system for removing bulk containers from palletized loads, transfer of a product from a bulk container to storage container, and the incorporation of a vending machine at a retail location as this is well known and expected in the art. This is evidenced in everyday manufacturing of numerous products that are made at a factory, loaded onto pallets, and trucked across the country to numerous retail locations.

Regarding the criteria for establishing a *prima facie* case of obviousness, there exists motivation to apply the known teaching (see Kirschner) for transporting soft-drinks in concentrated form for the purpose of reduced weight and volume or other consumer products. It would be "reasonable" to expect the success of applying such a system to numerous consumer products used at retail locations.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is (703) 305-4959. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 703 308-2187.

The fax number for this Group is: 703-872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Brian D. Nash
27 October 2003



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700